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March 31, 2015

VIA CM/ECF

Daniel E. O'Toole
Circuit Executive and Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20005

Re: Supplemental Authority in *AdjustaCam LLC v. Newegg, Inc., et al.*
Nos. 2013-1665, -1666, -1667

Dear Mr. O'Toole:

Pursuant to FRAP 28(j), plaintiff-appellant respectfully submits the attached decision in *Biax Corp. v. Nvidia Corp.*, No. 2013-1649 (Fed. Cir. Feb. 24, 2015) (nonprecedential), which issued after briefing was closed in this case.

Even under the deferential abuse of discretion standard of the *Highmark* case, see *Highmark v. Allcare Health Mgt. Sys.*, 134 S.Ct. 1744, 1747 (2014), the *Biax* court reversed a district court's exceptional case finding under 35 U.S.C. § 285, because the district court's claim construction order did not foreclose *Biax*'s claim construction position and because that position was reasonable under the district court's construction. *Biax*, Slip Op. at p. 11.

In the present case, appellees argue that the District Court erred in denying their Section 285 motions in part because they contend that *AdjustaCam*'s infringement theories were baseless. However, the District Court rejected appellees' argument because, *inter alia*, it held that: (1) "the constrained ball and socket joint could meet the claim limitation which requires the hinge member being rotatably attached to the camera along a single axis of rotation," (A0006); (2) "one could reasonably argue that Defendants' products meet the 'rotatably attached' limitation" (A0006); and (3) "*AdjustaCam*'s infringement theories are not objectively baseless" (A0006). In the present case, *AdjustaCam*'s infringement positions were fully consistent with the District Court's claim construction ruling. But even if *AdjustaCam*'s infringement positions might arguably have been at odds with the district court's construction (whether deemed clear or ambiguous) of "rotatably



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attached” (which they were not), at a minimum, the District Court determined that its claim construction order did not foreclose AdjustaCam’s infringement position, which was reasonable. *See, e.g.*, (A0006).

The fact that *Biax* resulted in reversal under the deferential *Highmark* standard compels affirmance of the District Court’s ruling in this case. Further, including for the reasons that the pre-*Octane* district court ruling in *Biax* was reversed rather than remanded, the pre-*Octane* ruling in this case should be affirmed (including under a more deferential standard) rather than remanded.

For at least these reasons, *Biax* supports the affirmance of the District Court’s ruling in this case.

Sincerely,

COLLINS EDMONDS POGORZELSKI
SCHLATHER & TOWER, PLLC

A handwritten signature in black ink, appearing to be 'J. Edmonds'.

John J. Edmonds

cc: Counsel of record by CM/ECF